HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 882 of 2004 (MS)

Km. Kavita Bhatt ... Petitioner

Versus

Uttaranchal Shiksha Evam Parisha Parishad and others ..Respondents

Dated:- 18.9.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ in the nature of mandamus directing the respondents to revaluate as well as to scrutinize her answer books of English, Physics and Chemistry of Intermediate Examination 2004, conducted by Uttaranchal Shiksha Evam Pariksha Parishad.

So far as the revaluation of answer books is concerned the same is not permissible in view of the various authorities of the Apex Court and High Courts. The Apex Court in Bhushan Uttam Khare vs. Dean B.J. Medical College, 1992 (2) SCC 220: AIR 1992 SC 917, has held as under:

"In deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matter falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should

interfere with them only when it thinks it must do so in the interest of justice."

The Apex Court in Arun Desai vs. High Court of Bombay through Chief Justice, reported in 1984 (Supp) SCC 372, has held as under:

"Students who fail in their examinations are generally prone to made allegations that the assessment of their answer scripts is defective, arbitrary or partial to explain their failure and to console themselves with the thought that not they but the examiners are to be blamed for that."

The Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupesh Kumarasheth AIR 1984 SC 1543 has held that evaluation of answer book does not attract the principle of natural justice. The observations of the Apex Court are as under:

"A process of evaluation of answer papers or of subsequent verification of marks does not attract the principles of natural justice since no decision making process which brings about adverse evil consequences to the examines is involved."

Coming to the argument with regard to the scrutiny, Rule 21 Chapter XII of U.P. Education Code, provides as under:

21. उन परीक्षार्थियों की उत्तर पुस्तिकायें जो मुख्य परीक्षा में केवल एक विषय उस विषय के लिए निर्धारित 5 प्रतिशत अंको से अधिक से उत्तीर्ण नही हैं बिना शुल्क अथवा आवेदन पत्र के संनिरीक्षित की जायेगी । अन्य परीक्षार्थी जो अपनी उत्तर पुस्तकें संनिरीक्षित कराना चाहते हैं निम्नलिखित नियमें के अनुसार करा सकते हैं ।

क. कोई परीक्षार्थी जो परिषद द्वारा संचालित परीक्षा में प्रविष्ट हुआ है विषयों के अपने अंको की संनिरीक्षा द्वारा पुनः जॉच कराने के लिए आवेदन पत्र दे सकता है ।

ख. ऐसे समस्त आवेदन पत्रों के साथ कोष चालान की एक प्रतिलिपि यह दिखाते हुए 20 रूपये प्रति विषय की दर से निर्धारित शुल्क दे दिया गया है, अवश्य होनी चाहिए। उत्तर प्रदेश से बाहर के सीन से आवेदन पत्र भेजने वाले परीक्षार्थियों के सम्बन्ध में यह शुल्क सचिव के कार्यालय में प्रेषित पोस्टल आर्डर अथवा स्टेट बैंक आफ इंडिया की इलाहाबाद शाखा पर रेखित बैंक डाफट द्वारा भेजा जाना चाहिए

।ग. ऐसे समस्त आवेदन पत्र परीक्षाफल की तिथि से तीस दिन की अवधि के अन्दर अवश्य दिये जाने चाहिए ।

The aforesaid rule (Ka) contains the provisions regarding scrutiny पुनः जॉच of the answer books. The provision is self-explanatory and the Board has power to scrutinize the answer books in accordance with Rule (ka) of Rule 21. The rule gives ample power to the Board to help and assist the students who are desirous of getting their answer books scrutinized.

In the case of Vaibhave Pandey vs. Board of High School and Intermediate Education (1998) 2 U.P.L.B.E.C. 1501, directions were given for checking the answer books in presence of guardian of the petitioner.

It has been held by the Allahabad High Court in the case Mobeen Ahmad Ansari vs. State of U.P. and others (1999) 1 UPLBEC 603 as under:

"It is a matter of great concern that in the recent years there is consideration influx of such writ petitions in this Court has increased. Earlier the Board of High School and Intermediate Education had inspired so much confidence that seldom writ-petition were filed. Filing of writ petition on such a large scale before this Court indicate that there is considerable dissatisfaction among the students and their parent which requires introspection by the Board authorities as well although this Court seldom interfere in the revaluation of the marks, but with a view to have greater accountability and transparency there is a need for framing some certain

rules to rectify the error, mistakes or defection calculation of the marks."

In view of the aforesaid facts, liberty is given to the petitioner to apply for scrutiny of her answer books according to Regulation 21 of Chapter XII of Education Manual Act. If such an application is filed, the respondents are directed to scrutinize the answer books in presence of the petitioner and her guardian along with the assistance of subject expert, after giving notice to the petitioner by or before 5th October 2004,

Subject to the aforesaid observation, the writ petition is disposed of.

3.9.04 **(Rajesh Tandon J.)**

*Dhyani